

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NUMBER:

15-2606

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
January 25, 2017

B E F O R E:

THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE
UNITED STATES MAGISTRATE JUDGE JOEL SCHNEIDER

A P P E A R A N C E S:

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6
7 Certified as true and correct as required by Title 28,
8 U.S.C., Section 753.

9 /S/ Carl J. Nami

1 (open court)

2 THE DEPUTY COURT CLERK: All rise.

3 THE COURT: Thanks. Have a seat. All right. Good
4 afternoon. How is everybody?

00:20 5 All right. Have a seat. Relax. Where is our man from
6 New Orleans?

7 MR. SLATER: He said he had enough of these
8 conferences because nothing ever happens.

9 THE COURT: Since he's not here, we're going to
00:20 10 appoint him to something that he's not going to like. How
11 about that?

12 MR. SLATER: I think that, that -- he should be on
13 the lunch committee. He had this deposition and he said he
14 couldn't get out of it.

00:21 15 THE COURT: That's fine. No big deal. All right.
16 Welcome back, everybody. Just one preliminary thing I want to
17 bring to everybody's attention. Defense counsel already knows
18 this. We are trying a to construct, for lack of a better
19 term, a spread sheet for the court so we can keep track of all
00:21 20 this stuff, and one data point that we don't have, so we've
21 asked defense counsel if they could help us with this. We
22 want to put in our spread sheet a very general description of
23 the injuries being claimed by each of the separate plaintiffs.
24 So, they've offered to give us just a very short description
00:21 25 of the plaintiffs' injuries so we can put it in those spread

1 sheets so we can track of who's doing what. Okay?

2 MR. SLATER: Just for the Bell Weather cases?

3 THE COURT: No. It's going to be --

4 MR. SLATER: Cross litigation?

00:22 5 MS. SHARKO: And that will come from the PFS, not
6 from medical records.

7 THE COURT: Right, it comes from the PFS. We don't
8 have access to the PFS. I'm not asking that we have access to
9 the PFS.

00:22 10 MR. SLATER: We can have them delivered in hard copy.

11 THE COURT: Well, thank you. That I don't need at
12 this point.

13 All right, I have your proposed agenda. I have a
14 number of complaints in the Federal and State litigation. We
00:22 15 have first time listing on page one, paragraph three. That's
16 still on?

17 MS. SHARKO: Yes. No changes there.

18 THE COURT: Okay. The second time listing there's
19 two of them listed?

00:22 20 MS. SHARKO: Yes. No changes. They should be
21 allotted to Orders to Show Cause.

22 MR. GOLOMB: Your Honor, on the Mason case. That's
23 my case.

24 THE COURT: Yes.

00:22 25 MR. GOLOMB: And we're asking for another 30 days

00:23 1 there. Mason does not recall the name of his physician but
2 remembers the clinic that he went to and that clinic is closed
3 down. So we're trying to identify where they forwarded the
4 records to and we just request another 30 days before this
5 Order.

00:23 6 THE COURT: Well, you're going to get the 30 days
7 because that's how long it's going to take for the Order to
8 Show Cause to be returnable anyway, and then if you have more
9 information, then at the next status conference I want you to
10 tell me about it.

11 MR. GOLOMB: Okay.

12 THE COURT: So that we don't dismiss it. I'll listen
13 to you then.

14 MR. GOLOMB: Okay.

00:23 15 THE COURT: Then we'll see what happens.

16 MR. GOLOMB: Okay. Thank you.

17 THE COURT: Paragraph four, overdue fact sheets,
18 first time listing.

19 MS. SHARKO: We are down to 37.

00:23 20 THE COURT: Down to 37.

21 MS. SHARKO: So number four Branch.

22 THE COURT: Is out?

23 MS. SHARKO: That comes off the list. Number nine,
24 Curiton. C-u-r-i-t-o-n, is off. They served a PFS yesterday.

00:24 25 Number 24, Moore is off. They served a PFS yesterday.

1 Number 26, Plater. P-l-a-t-e-r, is off. They served a
2 PFS yesterday.

3 Number 28, Rhymes as in nursery. They're off. They
4 served a PFS yesterday.

00:24

5 Number 40, Wells is off. They served the PFS
6 yesterday. And number 41, Westbrook, is off. They served a
7 PFS yesterday.

00:24

8 MR. GOLOMB: Your Honor, number 27 should come off as
9 well. That's Roland. We've already filed a stipulation of
10 dismissal.

11 THE COURT: Okay.

12 MS. SHARKO: I don't know one way or the other, but
13 we'll watch for it.

00:25

14 THE COURT: We'll obviously take counsel's word for
15 it. Well, you know, at this rate I think we calculated with
16 these stipulations of dismissal it will be 2037 we'll have all
17 these cases dismissed? Justice at work.

18 All right, second time listing.

00:25

19 MS. SHARKO: Second time listed all nine cases are
20 still deficient and should go on to an Order to Show Cause,
21 please.

00:25

22 MR. SLATER: One second, Your Honor. Case four on
23 that list, Hoker. I've been asked by counsel from Wagstaff
24 and Carmel to make an application to the court for a 90 day
25 extension. The plaintiff died recently. So the court -- so

00:25 1 they asked for an extension to have time for the family to
2 have a representative appointed et cetera and to take care of
3 all that and apparently from the defense would not consent to
4 an extension. So, we're asking the Court if we could have an
5 extension for someone who just died.

00:26 6 MS. SHARKO: And so here's our position. We got that
7 request yesterday. This case was filed on June 30th of last
8 year. It was served on July 8th. The PFS was due on
9 October 6th. We got nothing. An overdue letter was sent on
10 October 14th. We got nothing. It was listed on the November
11 agenda as a first timer. We got nothing. And then now it's a
12 second time. Apparently according to our internet research,
13 the man died in December. So, our sympathies to the family,
14 but we have nothing on this case at all.

00:26 15 THE COURT: We're going to list it again on the
16 second listing. So that we'll give them another 30 days and I
17 want a report.

18 MS. SHARKO: Okay.

00:26 19 THE COURT: As to what steps have been taken to
20 substitute an Estate, if any, if they still want to continue.

21 MR. SLATER: To make sure they're actively doing it.

22 THE COURT: Yes. Okay?

00:26 23 MR. SLATER: Okay. I know they do intend to and they
24 actually I can tell you, they told me that a PFS was basically
25 filled out. They just don't know whether to sign it right now

1 because they don't have a rep. Thank you, Judge.

2 THE COURT: You got some more time.

3 MR. SLATER: Okay.

4 MS. SHARKO: We, frankly, would be more sympathetic

00:26 5 if we had a PFS that at least showed there was information
6 there I guess that it takes a while to get an Estate in place.

7 THE COURT: All right. It takes a little while.

8 We'll see.

9 MS. SHARKO: Okay.

00:27 10 THE COURT: Mr. Golomb.

11 MR. GOLOMB: Two cases on that list, Your Honor,
12 Ballard, we have a similar situation. Mr. Ballard recently
13 passed away and we're working with the surviving spouse to
14 complete the fact sheet.

00:27 15 THE COURT: That's number one on the list. Correct?

16 MR. GOLOMB: Yeah.

17 MS. SHARKO: That's totally new to us. That case has
18 now been around for several months. We have no information on
19 it. I have no idea what the date of death is.

00:27 20 THE COURT: We'll give it another second listing.

21 MR. GOLOMB: And on Vickie Gains, we've already filed
22 a stipulation of dismissal on that.

23 THE COURT: Okay.

24 MS. SHARKO: Okay. We look forward to seeing that.

00:27 25 (Brief pause)

1 THE COURT: Paragraph six, page 10. Two cases
2 listed.

00:28 3 MS SHARKO: Yes, sir. So these are case where when
4 you read the PFS, the injuries that are alleged come before
5 Benicar use, not after. And we've raised that question with
6 plaintiffs. We've gotten no response, and we submit that
7 those cases should be dismissed because usually it has to be
8 taken within the then happened event.

00:28 9 THE COURT: Usually. What are we doing with these
10 two?

00:28 11 MR. SLATER: You know, our position is that, and
12 obviously I don't have the medical records in front of me, but
13 I think counsel is essentially looking for a expedited way to
14 get Summary Judgment on a case. I think if when the time
00:28 15 comes, they can deal with it, but I don't have the medical
16 facts in front of me. Maybe the person with gastrointestinal
17 issues before and their experts are going to say, well, that
18 was related to one thing and then the Olmesartan caused issues
19 when they went on the drug, that's different and it would have
00:28 20 been more severe or if this wouldn't have happened. I mean
21 that's all in the realm of very possible. I don't have the
22 records to say I know the answer. But for them to pick out
23 records and say they've analyzed it so the plaintiff has to
24 prove their case at this point when it's not even a Bell
00:29 25 Weather case. I think it's not an issue for us to be doing

1 that now.

2 THE COURT: Well, we're going to deal with that issue
3 by picking off the strategy in a few seconds. But I think
4 when there's a specific request from defense counsel alerting
00:29 5 the plaintiffs that there is a specific problem, I think I
6 need a little bit better response than that. Whoever
7 represents these two people should be at least on the phone
8 with Miss Sharko saying, well, this is what we think is going
9 on here.

00:29 10 MR. SLATER: Okay.

11 THE COURT: Try to resolve this because if this is
12 true, then Rule 11 would seem to indicate they shouldn't be
13 continuing in these cases.

14 MR. SLATER: I'll talk to -- well, I know one is Mr.
00:29 15 Golomb's. So I certainly think that I can hand that off to
16 him and on the other firm I'll talk to the other law firm and
17 tell them they need to provide an explanation for why they
18 think the case is a valid case.

19 THE COURT: Right.

00:30 20 MR. SLATER: Okay.

21 MS. SHARKO: We appreciate that. We sent letters out
22 in mid November.

23 THE COURT: Maybe Mr. Golomb can give us an answer on
24 the Hiddleston case.

00:30 25 MR. GOLOMB: I can, Your Honor. They're wrong on the

1 facts, but with that said, we're dismissing the case for other
2 reasons.

3 THE COURT: You're going to file a stipulation?

4 MR. GOLOMB: Yes.

00:30

5 THE COURT: Okay. So get a response from Matthews
6 and Associates to Miss Sharko, please, on that issue and open
7 up some line of communication with Miss Sharko on this case.

8 MR. SLATER: Yes, I will.

00:30

9 THE COURT: Thank you. All right, now we get to
10 number seven which is the 82 cases which is now 80 cases?

11 MS. SHARKO: Right. Actually since we sent the
12 letter to Your Honor, we've heard from eight plaintiffs. Two
13 took dismissals with prejudice as a result of the letter I
14 guess confirming we were right and six of the plaintiffs sent
15 records documenting an event and a prescription. So they
16 would come off the list and we heard nothing from anyone else.
17 I think the fact at least six people served records, shows
18 that plaintiffs are holding records and not updating their
19 PFS's. So we would ask that that be done.

00:31

00:31

20 THE COURT: Well, really it shows that you,
21 plaintiff's counsel, if they have such records, were deficient
22 in providing them to you. This is a problem with these
23 stragglers. We will put into place an efficient method to
24 dispose of the stragglers without you having to file summary
25 judgment in each and every one. So you're not going to handle

00:31

00:32 1 80 or a hundred summary judgment motions on these kind of
2 cases. But I don't think this is the appropriate time to do
3 it. I promise you we will get to that and you'll have a
4 method by which to get rid of these cases. I want to focus
5 really more, all of your energies on the experts in getting
6 that lined up for Daubert Hearings at this point. Okay?

7 MS. SHARKO: Okay.

8 THE COURT: All right, that's paragraph eight which
9 is the defendant served its list of experts.

00:32 10 MS. SHARKO: We do and we have one addition to make
11 to that. I was told this morning that there's one additional
12 regulatory expert Dr. Feigal, F-e-i-g-a-l. And his deposition
13 date has already been set some weeks ago. It was on a letter
14 to plaintiffs and it was -- we didn't have it when we sent
00:32 15 this letter. So we apologize but that's -- he should have
16 been on the list to Mr. Slater and to the court yesterday
17 afternoon.

18 MR. SLATER: I don't know what, what -- we didn't
19 accept any of the dates yet. So I'm not sure what date he's
00:33 20 on for, but we can sort that out and you can let us know. We
21 certainly still have a significant issue here from our
22 perspective, Judge.

23 THE COURT: We're going to deal with it right now.
24 We'll talk about it right now.

00:33 25 MR. SLATER: Okay.

1 THE COURT: All these experts out there, that the
2 plaintiff had a significant number of experts and the
3 defendants have an extraordinary number of experts at this
4 point.

00:33

5 Let me take you back to November 30th, and November
6 30th we had a conference, phone conference and at that point
7 we were discussing, Mr. Slater was discussing the experts and
8 I stated to you all on the phone, well, of course, recognized
9 there's just no chance that you're going to be able to put 21

00:34

10 experts on the stand during the trial. And perhaps I was
11 being too subtle, although I'm not usually accused of being
12 too subtle. Folks, we are not going to entertain testimony
13 from 50 experts and I'm not going to hear 50 Daubert motions
14 regarding experts. It just isn't going to happen, and the
15 jury is never going to hear this number of experts. It's
16 wasting time. So we're going to pare this down, and the first
17 way we're going to pare this down is I want to concentrate,
18 focus back to where I've always been since the beginning of
19 the case. I want to focus first on the general causation

00:34

20 experts. Let's focus and get this done. Let's get the
21 Daubert hearings done on them first. And, perhaps, I should
22 have been clearer about that two months ago, but -- and that's
23 my fault and I'm sorry. But we can still fix this problem.

00:35

24 But I -- there are, as I count them now, 13 or 14 defense
25 general liability experts and the best I can tell from the

1 plaintiffs there are six. Correct?

2 MR. SLATER: That's correct, Your Honor.

3 THE COURT: Correct?

4 MS. SHARKO: Yes.

00:35

5 THE COURT: All right.

6 MS. SHARKO: But.

7 THE COURT: But?

8 MS. SHARKO: We have no intention of calling all of

9 these experts in every case should we get to trial, but we're

00:35

10 mindful of the fact that we have ten plaintiffs and we have

11 general and specific causation as to each of those ten

12 plaintiffs. And so we didn't want to be in a position where

13 we identify one expert and then he or she is not available for

14 whatever reason when trial is set. So, number one, we don't

00:35

15 intend to call all those experts in any one trial. We know

16 that you would never let us do that.

17 The second thing is that Daubert and general causation

18 and specific causation cover a wide range of areas. And so we

19 need people in all these different areas to address those

00:36

20 areas. And the third issue is simply one of scheduling. We

21 don't know when the Daubert hearings are going to be. And,

22 so, yes, we have a couple epidemiology experts.

23 THE COURT: Four. You have four.

24 MS. SHARKO: Right.

00:36

25 THE COURT: I suggest you don't need four.

1 MS. SHARKO: If we knew when the hearings were going
2 to be, we could narrow that group. If we knew when the
3 hearings were going to be and there was an agreement that if
4 the cases were tried, we could use any of those four. We'd be
5 willing to narrow it to two.

00:36

6 Part of our concern is looking down the road at the big
7 picture and making sure that we're not foreclosed.

8 THE COUR: Explain to me how the date of the hearing
9 determines the number of experts that you're going to use.

00:37

10 MS. SHARKO: Okay. So, why, why did we name four.
11 Because we're looking at these experts as trial experts in
12 addition to the Daubert Hearings and then if you said no we
13 could only have two, we need to make sure that those two, at
14 least one of them is available to testify live at the Daubert
15 Hearing.

00:37

16 MAGISTRATE JUDGE SCHNEIDER: So do you anticipate at
17 the Daubert Hearing separate rulings have to be made as to
18 each of the four epidemiologists?

00:37

19 MS. SHARKO: It depends on what plaintiffs'
20 challenges are, and really if this is premature in the sense
21 that they should see the reports. Another way to narrow this
22 and I've been thinking about this because I'm sensitive to the
23 issues you raised, if we have ten cases, we're not sure about
24 all the dispositive motions we're going to make, but we know
25 that we're going to make statute of limitations motions in

00:38

1 two cases. If we took those two cases off this list and
2 deferred discovery, expert discovery on that, that would get
3 rid of a number of experts for both sides.

00:38

4 THE COURT: I don't think it's going to have a
5 significant impact on the number of experts on both sides. If
6 you focus on general liability, general causation, does
7 Olmesartan cause spruelike enteropathy, et cetera, et cetera
8 and all the other maladies. Which of these experts are going
9 to say yes or no?

00:38

10 MS. SHARKO: Well, Mr. Parker will answer that
11 specifically as to the experts. But I don't think we can or
12 should address General Causation in a vacuum. I think we
13 should be doing general and specific causation in the context
14 of the specific cases.

00:38

15 THE COURT: Why not in a vacuum? That's the full
16 genesis of this case was that the plaintiffs felt that
17 olmesartan causes these conditions and that's how they start
18 and the manufacturer said no it doesn't. Until we get an
19 answer to that question, where do we go?

00:39

20 MS. SHARKO: Well, the question really is do the
21 plaintiffs' expert's opinion -- are the plaintiffs' expert
22 opinions as to General Causation supported by sound scientific
23 evidence.

24 THE COURT: Right.

00:39

25 MS. SHARKO: And we think that should be examined in

1 conjunction with a specific case.

2 THE COURT: How does it help me to examine it in
3 conjunction with a specific plaintiff in a specific
4 plaintiff's complaints of injury?

00:39

5 MS. SHARKO: Because if you don't, you're, you're
6 adjudicating a question in a vacuum. It's an issue that's not
7 anchored in the facts of one specific case.

00:40

8 THE COURT: It's anchored in the facts in every one
9 of these 2000 cases. Every one of these 2000 cases is
10 dependent on the answer to that first question. If the answer
11 is no, that's it. If the answer is yes, then they got to
12 prove what their injuries are period. That's all it is.

00:40

13 So, I mean I know you've stated this before about the
14 vacuum, but in essence it is a vacuum because of the way the
15 case is framed and the way the case was filed and the reason
16 it's here. That the plaintiffs want an opportunity to prove
17 what in effect is new science. And, you know, Daubert sets
18 out how you do that. It's not an easy thing to do, but it's
19 doable under Daubert. And it seems to me that we're wasting a
20 lot -- not wasting, but we're spending an awfully lot of time
21 and effort and expense on both sides on everything else
22 without attacking that crucial question yes or no.

00:40

23 MS. SHARKO: I think we are, and we're armed and
24 ready to attack that, plus the specific causation in a given
25 case. We have ten cases on both sides rolled up and ready to

00:41

00:41 1 go as of January 31st when we serve our expert reports. To
2 save time we could take out the two statute of limitations
3 cases. That would give us eight cases, or Your Honor could
4 randomly pick five of the ten. I think it should be random.
5 And then that would cut the number of experts down. But we
6 believe that we should address specific and general causation
7 simultaneously.

8 THE COURT: Mr. Slater? Mr. Golomb?

00:42 9 MR. SLATER: Well, obviously you know our position
10 which is they need to drastically cut the number of experts.
11 I mean --

12 THE COURT: We're going to do that.

00:42 13 MR. SLATER: Okay. So -- and I think Your Honor's
14 going to need information of what some of these people are
15 actually generally going to say and I think that's obvious to
16 the court.

00:42 17 As far as cutting cases, I've never heard that until
18 right now. So, I'd have to, I'd have to know what they're
19 talking about in terms of which cases, why, what the benefit
20 -- what's the procedure later and I'd have to talk to a few
21 other people. I didn't want unilaterally to make that call
22 for other people who have a lot vested in this litigation and
23 not that I'm afraid to make a decision but I think it's the
24 appropriate thing to do. And I don't even know if the court
00:42 25 is inclined to do that. If Your Honor is, I can speak to

1 people, we can talk about it. But, you know, I'm in full
2 agreement with the court that we should be focusing on what do
3 we need to put together to prove yes or no that the drug
4 causes this issue. And that's really the primary question.
00:42 5 And we've said, I've been in front of you many times saying I
6 don't think when push comes to shove that they are going to
7 oppose general causation. We'll see what happens with these
8 reports and these depositions. I don't know, frankly, how
9 they can do it when every scientific article in the literature
00:43 10 says it does. So I don't know how they oppose it under
11 Daubert. I mean, frankly, they are going to put us to our
12 test and whoever does testify, I would expect we're going to
13 have motions back at them for having to give opinions without
14 being rooted in the actual peer review literatures. I mean
00:43 15 there are some issues on the general causation that will keep
16 the court quite busy and keep us busy anyway at the core of
17 what the case is. So I think we have to stick to where we
18 were which is they need to drastically cut down and we have to
19 figure out who really needs to be deposed and which experts
00:43 20 really need to be in the case at this stage. If the court has
21 any inclination to discuss paring the cases, I think we have
22 to really understand what the court's inclined to do, what's
23 being offered. How does it happen so I can talk with my team
24 and give you a reason to respond to that. It's not just my
00:43 25 view but allows others that have an important investment in

1 this also to say something.

2 THE COURT: Well paring the cases, Miss Sharko says
3 there's two of the ten in the statute of limitations issues.
4 I mean that's rather straightforward.

00:44

5 MR. SLATER: And I don't know which cases those are.

6 THE COURT: Well, I don't either, but that was the
7 point I wanted to make is that that may be something that the
8 plaintiffs should discuss with Miss Sharko as to those two
9 cases, and if she's right, then what's the point?

00:44

10 MR. SLATER: If she'll tell us which those are, we'll
11 take a look at them.

12 THE COURT: I think you really ought to have a sit
13 down, both sides as to those two cases because she even needs
14 to file those kinds of motions I mean.

00:44

15 MR. SLATER: I understand that.

16 THE COURT: Those kinds of cases have been on a long
17 time.

00:44

18 MAGISTRATE JUDGE SCHNEIDER: I thought the question,
19 Mr. Slater, was whether in the first instance you want to go
20 to a Daubert trial on general causation or as Mr. Sharko is
21 suggesting, general and specific causation.

00:45

22 MR. SLATER: Okay. Well, on that issue, Your Honor,
23 when Judge Kugler raised that on that at that conference, we
24 think it makes absolute sense to have a trial on a single
25 issue first because then the efficiency going forward is

00:45 1 compounded. I mean at that point if we prevail on that, these
2 experts aren't coming in. You don't have to bring in an
3 epidemiologist. You don't -- even if they're needed, which is
4 -- you know, we'll see what happens. We were very careful to
5 make sure we covered our bases, so we win the basketball game
6 against our epidemiologists. But they're good players. But,
7 no, absolutely that from our perspective makes perfect sense
8 to focus on getting to a trial in general causation first
9 because for reasons the court has identified. Absolutely,
00:45 10 we're all for that and I think it makes a lot of sense and
11 we're willing to try that, that case whenever the court tells
12 us to.

13 MS. SHARKO: And we are opposed to that. We think
14 that's a very significant due process. We're trying one issue
00:45 15 in a vacuum.

16 THE COURT: Well, it's been done. It's been affirmed
17 by the Court of Appeals, and I'm strongly leaning in that
18 direction, but before we get there. Let's talk about the
19 experts. I want to focus on the first tranche of these
00:46 20 motions are going to be directed to the general liability
21 experts. Each side is going to pick five general liability
22 experts. Five. That's all you're going to have on your
23 liability.

24 MR. SLATER: Do you mean on causation?

00:46 25 THE COURT: General causation.

1 MR. SLATER: Okay. I'm sorry.

2 THE COURT: I'm sorry. That's correct. Need to be
3 more specific. And your Daubert motions are going to be
4 directed at the five that your advisory has served on you. So
5 you're going to need to identify, Miss Sharko, when you serve
6 those reports next week. Right?

7 MS. SHARKO: Yes, sir.

8 THE COURT: Which five you're going to be relying for
9 general causation. You're going to have to notify her by the
10 end of that date the five that you're going to be relying on
11 for general causation. Okay? So, by next week we're going to
12 have ten experts going, there's going to be ten reports done,
13 take the ten depositions, file the motions immediately, and
14 we'll hear those immediately, and then we'll back fill in the
15 specific causation experts after that. Let's get these done
16 first. It's lot of work. I want to focus on getting it done
17 because that to me has always been the key of this case.

18 MS. SHARKO: Judge, we have experts in six different
19 areas.

20 THE COURT: I know. So do they.

21 MS. SHARKO: They have experts in five areas and we
22 would really need --

23 THE COURT: Which area is additional for you that
24 they don't have? Why do you need an expert to testify in an
25 area they're not raising?

1 MS. SHARKO: Because we believe that each of the
2 areas we have are important to the determination of the issue
3 of General Causation. So we have pharmaco-vigilance.

4 THE COURT: Right.

00:47

5 MS. SHARKO: And they don't have anybody broken out
6 separately as to pharmaco-vigilance. So we would ask for six
7 on the variance, otherwise we have no one to speak to an area.

8 THE COURT: It's an area that they haven't raised.

9 MS. SHARKO: They have.

00:48

10 THE COURT: How have they raised the
11 pharamco-vigilance?

12 MS. SHARKO: They have pharamco-vigilance addressed
13 by their regulatory people and by their epidemiologists, and I
14 think by their GI person and we have people who have specific
15 expertise in each of these six areas. And so if we cut out,
16 if we're forced to cut out one of these and that's an area,
17 that's a gap for us.

00:48

18 THE COURT: I just don't remember -- I've read their
19 expert reports a long time ago. I just don't remember that
20 specific part of them.

00:48

21 MS. SHARKO: So they have two GI doctors. We have
22 three. They have one pathologist. We have one general
23 pathologist. They have one regulatory. We have two
24 regulatories. They have one toxicologist. We have two
25 toxicologists. And then they have one epidemiologist and we

00:49

00:49 1 have four. And then we have two people whose specific area of
2 expertise is pharmaco-vigilance. They absolutely raised
3 pharamco-vigilance. That's one of the key issues in the case
4 as Judge Schneider has told us over and over. But they
5 addressed pharmaco-vigilance but by having multiple of their
6 experts talk about it and we broke it out and got people whose
7 specific area of expertise that was to address that. So we
8 would ask permission to have one of those.

00:49 9 THE COURT: All right. Mr. Slater, anything you want
10 to say?

11 MR. SLATER: Yeah. What I would say is I think,
12 look, whether it's five experts or six experts, we have a
13 total of six experts. So when you made your ruling on five, I
14 just looked at the list and said we're going to have to drop
15 somebody at this stage and sucked it up and said okay, big
16 deal.

17 THE COURT: Make it six for each side.

18 MR. SLATER: Yeah.

00:50 19 THE COURT: Six for each side. There's not going to
20 be that much more work.

21 MR. SLATER: We'll go either way.

22 THE COURT: Six on each side. So you don't need to
23 send a letter. You have all six.

00:50 24 MS. SHARKO: My other question is if we could have
25 the week that we're going to have the Daubert Hearing because

1 I think we will at least request live testimony so we can make
2 sure that the people we pick are available that week?

3 THE COURT: You know they don't have to be here to
4 testify live.

00:50 5 MS. SHARKO: I understand that.

6 THE COURT: Okay. Well let's work then from you're
7 serving those reports next week. Then depositions you have I
8 assume -- well, I shouldn't assume because plaintiffs haven't
9 seen the defense experts, but assuming the plaintiff wants to
10 depose all six.

11 MR. GOLOMB: Right.

12 THE COURT: You have 12 depositions to take. How
13 long is this going to take you in February?

14 MS. SHARKO: We took Judge Schneider at his word.
15 That it had to be done in -- by February 28th or we would all
16 die and every one of the experts --

17 THE COURT: I'm suggesting you don't need that long
18 because you only have 12 now.

19 MS. SHARKO: No. But, but every one of the experts
20 has dates that have been offered. So we have dates set for
21 all --

22 THE COURT: Okay.

23 MS. SHARKO: -- of our 40 or how ever many and we
24 have dates from the plaintiffs for all of theirs. So to avoid
25 chaos, my request is that we keep the dates that we have.

00:51 1 MR. SLATER: I would say I know that one -- I, I
2 think that it makes sense for us to use the month of February
3 to do the 12 depositions, right. And we just now that with
4 this ruling I assume the defense is going to come back to us
5 and tell us which are in and then we can -- we'll know -- then
6 we'll get those dates. We'll know which ones are really in
7 and we'll say yes or no real quick.

00:52 8 THE COURT: When they serve their reports, they're
9 going to tell you the six they're going to rely on.

00:52 10 MR. SLATER: Whenever they tell us that, we'll say,
11 you know if there's a real -- we're going to try to obviously
12 work with the dates. If there's a major issue, we'll tell
13 them. I doubt it will happen. I mean, I understand the
14 Court's view on that. So -- but it obviously greatly
00:52 15 simplifies the amount of work we have to do on the briefing
16 because now it's 12 experts instead of across the board. So
17 -- but I don't know how Miss Sharko feels about it. I'm fine
18 with doing the depositions in February and serving the briefs
19 the end of March. If we want to pull the date back a little
00:52 20 bit because it's only 12 experts, that's fine, too. I, I --
21 if Your Honor thinks that we don't need as much time, we could
22 probably start writing the briefs now anyway. There's not a
23 lot of secrets to what the standard is. It's going to be dep
24 quotes out of a deposition.

00:52 25 THE COURT: We all know what the law is.

1 MR. SLATER: Yup.

2 THE COURT: We've all been down this road a few
3 times. Well, Miss Sharko, then when are you going to have
4 your motions filed? Do you need as much time as we had
00:52 5 previously or can you do it faster?

6 MS. SHARKO: We need as much time as we had
7 previously because we've been relying on that date, number
8 one. Number two, we're doing it jointly with New Jersey.

9 THE COURT: Okay.

00:53 10 MS. SHARKO: And some of the depositions in New
11 Jersey are staggered. So we're doing two sets of briefs and
12 we would ask March 31 for the briefs and then we propose a
13 schedule back from there, March 31 for motions, April 21,
14 opposition, May 1, reply and the week of May 15 for hearings.
00:53 15 That's our proposal.

16 THE COURT: Okay.

17 MAGISTRATE JUDGE SCHNEIDER: What's the reply date?

18 THE COURT: May 1st.

19 MS. SHARKO: May 1st.

00:53 20 THE COURT: And that's fine. I assume that's okay
21 with the plaintiffs, those dates?

22 MR. SLATER: I think now that we know what we know
23 what the motions are really and I think those dates work fine.
24 Just to clarify one fine point. The general experts are the
00:53 25 same for both litigations. So there's not going to be any

1 depositions beyond February because there's no --

2 THE COURT: Not as to general liability.

3 MR. SLATER: Right. The general ex -- yeah, the
4 general experts will be deposed in February. There's no more
5 depositions in March.

6 MS. SHARKO: You're right.

7 MR. SLATER: Right?

8 MS. SHARKO: Yeah, you want that on the record. I
9 said you were right.

10 MR. SLATER: Yeah, that's okay.

11 THE COURT: Hallelujah. We made progress.

12 MR. SLATER: You know, Judge, I play chess. I've
13 been moving the chess board for two years to get to that.

14 THE COURT: Why don't you play baseball.

15 MR. GOLOMB: That was me.

16 MR. SLATER: Look at that. Yes, so that's -- so the
17 schedule on that works fine.

18 THE COURT: Okay.

19 MR. SLATER: I don't know about the hearing date.

20 That's up to the Court. We can work on that, but the schedule
21 for briefing is fine. Sorry, Carl.

22 THE COURT: Okay. All right. We have 46 briefs to
23 read and in advance of these. All right. Well, we can do it
24 in the middle of that.

25 MR. SLATER: Do you want to impose page limits on the

1 size and the opposition?

2 MS. SHARKO: I think the Rule fits.

3 THE COURT: Yeah.

4 MR. SLATER: Okay, just trying to make it simpler.

00:55 5 THE COURT: You don't have to repeat the boiler plate
6 legal argument to each and every one of these motions. Okay?

7 These are fact specific. I mean clearly and I think I've
8 hinted at this here and elsewhere, in this kind of a case it
9 seems to me that the qualifications are not going to be an
00:55 10 issue. It seems to me the fit is not going to be the issue,
11 the methodology is going to be the issue. So let's focus on
12 that. What did they do. How did they get to this opinion.

13 What did they rely on and why is that good science. Do it
14 that way. That's really what I'm interested. So you don't
00:55 15 have to spend a lot of time in your briefs talking about
16 general law and all the Third Circuit principles and all,
17 except that it applies in that specific fact. Okay?

18 MS. SHARKO: Okay.

19 MAGISTRATE JUDGE SCHNEIDER: Miss Sharko, can you
00:56 20 send me a copy of your six reports to Judge Kugler and myself
21 when you send them to the plaintiff?

22 MS. SHARKO: Absolutely. We're going to serve all
23 the reports and designate the six? You want all of them with
24 a sticky on our list which ones we're going to use?

00:56 25 THE COURT: I just want the six for now. The six

1 that we're going to be dealing with.

2 MS. SHARKO: Okay, will do.

3 THE COURT: Okay, we'll start those hearings on
4 May 15th. And I am permitting to you whatever time it takes
00:56 5 to put on whatever evidence you want, but, you know, don't
6 waste time.

7 MR. SLATER: I would assume, your Honor, that in
8 advance of those hearings we'll probably be speaking to Your
9 Honor and Judge Schneider about when we get closer about what
00:56 10 we really think we need to do anyway. Would that be a fair
11 assumption?

12 THE COURT: Yeah.

13 MR. SLATER: Okay.

14 THE COURT: We'll be meeting before then, that's for
00:57 15 sure. Okay.

16 MS. SHARKO: In terms of the meetings, I spoke to Mr.
17 Slater before this hearing and our request is that we move the
18 February hearing into March because we're going to be focusing
19 on February depositions albeit fewer than we thought we had.

00:57 20 THE COURT: Sure.

21 MS. SHARKO: Okay.

22 THE COURT: So when in March do you want to do this?

23 MS. SHARKO: Any day of the week of March 5th is fine
24 for us.

00:57 25 THE COURT: Well, you want to keep it on a Wednesday

1 the eighth, the afternoon of the eighth of March? You want to
2 do that?

3 MR. SLATER: Sure.

4 MS. SHARKO: Okay. Thank you.

00:57 5 THE COURT: All right, March 8th at 2:00 p.m.?

6 MS. SHARKO: Okay.

7 THE COURT: And obviously if you need a conference
8 before that, we can get you on the phone. All right.

9 Any other issues we want to talk about today?

00:58 10 MR. SLATER: I think we've covered everything, Your
11 Honor.

12 (Brief pause)

13 THE COURT: All right. Thank you, everybody.

14 MR. GOLOMB: Thank you, Your Honor.

00:58 15 MS. SHARKO: Thank you.

16 THE COURT: Spring training is right around the
17 corner.

18 (The matter was then concluded)

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Exhibit B

Protected Information - Susan Huftless, Ph.D.

1 in Crohn's disease. Are there other GI
2 disorders for which you are currently or
3 have in the past done research other than
4 Crohn's disease?

5 A. Yes. So I work in a GI
6 center. I've worked with numerous
7 investigators. So I've worked with
8 individuals with specialty in
9 interventional endoscopy and
10 pancreatitis. Obesity is considered a GI
11 disorder to many individuals. And then I
12 have work related to hernia repairs as
13 well.

14 That's -- any -- so my
15 expertise is to work with
16 gastroenterologists in any
17 gastrointestinal-related disorder. So I
18 don't limit myself to what it would be.

19 Q. You've never done a study
20 involving celiac disease, correct?

21 A. I've never done a study
22 involving celiac disease. That is
23 correct.

24 Q. Okay. And before you were

Protected Information - Susan Huftless, Ph.D.

1 retained by counsel, you never did any
2 work involving olmesartan-associated
3 enteropathy or spruelike enteropathy
4 associated with olmesartan use?

5 MS. SUTTON: Objection to
6 form.

7 THE WITNESS: No. No.

8 BY MR. PARKER:

9 Q. I did not see, Doctor --
10 tell me, are you a member of an editorial
11 board of any journal?

12 A. I am the -- as of January of
13 this year, the statistics editor -- one
14 of two statistics editor of Gut.

15 Q. Have you ever served on an
16 FDA panel?

17 A. I have not.

18 Q. Doctor, your CV says that
19 you are a contributor to the Cochrane
20 collaborative. Tell me what that means
21 to be a contributor?

22 A. So the Cochrane
23 collaborative has researchers from
24 throughout the world that conduct